

No. 23-1078

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IN THE UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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B.P.J., by next friend and mother, HEATHER JACKSON,

*Plaintiff-Appellant / Cross-Appellee,*

v.

WEST VIRGINIA STATE BOARD OF EDUCATION; HARRISON  
COUNTY BOARD OF EDUCATION; W. CLAYTON BURCH, in his  
official capacity as State Superintendent; DORA STUTLER, in her  
official capacity as Harrison County Superintendent,

Defendants-Appellees,

and

WEST VIRGINIA SECONDARY SCHOOL ACTIVITIES COMMISSION,

Defendant-Appellee / Cross-Appellant,

and

THE STATE OF WEST VIRGINIA, LAINEY ARMISTEAD,

Intervenors-Appellees.

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On Appeal From The United States District Court  
For The Southern District of West Virginia Case No. 2:21-cv-00316  
Honorable Joseph R. Goodwin

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**MOTION OF *AMICUS CURIAE***  
**INTERNATIONAL CONSORTIUM ON FEMALE SPORT**  
**FOR LEAVE TO FILE BRIEF IN SUPPORT OF APPELLEES**

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WILLIAM BOCK, III  
KROGER GARDIS & REGAS  
111 Monument Circle, Suite 900  
Indianapolis, IN 46204  
Telephone: 317-692-9000  
Fax Number: 317-264-6832  
[wbock@kgrlaw.com](mailto:wbock@kgrlaw.com)

Counsel for *Amici Curiae*

*May 3, 2023*

Pursuant to Federal Rule of Appellate Procedure 29(a), the International Consortium on Female Sport (“ICFS”), by counsel, moves for leave to file an *amicus curiae* brief in support of Appellee. The proposed brief accompanies this Motion.

### **POSITION OF PARTIES ON THIS MOTION**

All parties except for the West Virginia Secondary School Activities Commission (WVSSAC) consent to the filing of an *amicus* brief in this matter by ICFS. The WVSSAC has advised that it takes no position on ICFS filing an *amicus* brief. Federal Rule of Appellate Procedure 29(a)(2) suggests a motion is necessary in this instance.

### **INTEREST AND IDENTITY OF *AMICI CURIAE*<sup>1</sup>**

Proposed *amicus curiae* ICFS is a non-governmental organization of sports organizations and women’s sports advocates from across the political spectrum and around the world who are committed to the foundational principle that “fairness and safety for female athletes in sport is ensured by having a dedicated category for those born female.”

ICFS members and supporters who have joined and are identified in the

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<sup>1</sup> Pursuant to Federal Rule of Appellate Procedure 29(a)(4)(E), no party’s counsel authored this brief in whole or in part. No person other than *amici* and its counsel contributed any money intended to fund the preparation or submission of this brief.

ICFS brief are: Save Women's Sport Australasia (Australia & New Zealand), Fair Play for Women United Kingdom, Save Women's Sports, Spain, La Rueda Rosa, Mexico, Canadian Women's Sex-Based Rights, the Independent Council on Women's Sport USA, Linda Blade, Sharron Davies, Cathy Devine and/or Fiona McAnena. *Amici* have experienced the impact of Title IX as international student-athletes competing in the U.S., and as sportswomen outside the U.S. and as individuals who can describe the role Title IX plays within a global framework of international legal and human rights instruments which protect and advance the rights and opportunities of women. Reflecting their experience, *amici* have an interest in the preservation of the female sports category.

### **DESIRABILITY OF AN *AMICUS* BRIEF**

The attached brief outlines the impact Title IX has had on the development of women's rights globally and how Title IX operates within a larger international legal framework protecting the sex-based rights of women. *Amici* describe the pathway opened by Title IX for the growth of women's rights globally and explain that Title IX is part of a robust framework of international legal standards protecting the sex-

based rights of women. As Title IX was adopted alongside international instruments protecting the rights of women and using similar terminology those international instruments can be instructive in evaluating the purpose, role and proper interpretation of Title IX.

Proposed *Amici Curiae* therefore respectfully request that the court grant them permission to file an *amicus curiae* brief in support of Appellees.

WHEREFORE, for the foregoing reasons and those included in the brief of *amici curiae*, the International Consortium on Female Sport respectfully requests leave to file the attached *amicus* brief.

Respectfully Submitted,

KROGER GARDIS & REGAS, LLP

By: /s/ William Bock, III  
WILLIAM BOCK, III  
KROGER GARDIS & REGAS,  
LLP  
111 Monument Circle, Suite 900  
Indianapolis, IN 46204  
Telephone: 317-692-9000  
Fax Number: 317-264-6832  
[wbock@kgrlaw.com](mailto:wbock@kgrlaw.com)

Counsel for *Amici Curiae*

**CERTIFICATE OF SERVICE**

I hereby certify that on May 3, 2023, I electronically filed the foregoing document with the Clerk of the Court for the United States Court of Appeals for the Fourth Circuit by using the CM/ECF system. Participants in this case who are registered CM/ECF users will be served by the CM/ECF system.

/s/ William Bock, III

William Bock, III

KROGER, GARDIS & REGAS, LLP

111 Monument Circle, Suite 900

Indianapolis, IN 46204

Phone: (317) 692-9000

Counsel for *Amici Curiae*

## CERTIFICATE OF COMPLIANCE

This motion complies with the type-volume limitation of Federal Rule of Appellate Procedure 27(d)(2) because it contains 478 words, excluding those parts of the motion exempted by Federal Rule of Appellate Procedure 32(f).

This motion complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 32(a)(5), (6) because it has been prepared in a proportionately spaced typeface using Microsoft Word in Century Schoolbook using 14-point font for the main text.

/s/ William Bock, III

William Bock, III, Atty. No. 14777-49  
KROGER, GARDIS & REGAS, LLP  
111 Monument Circle, Suite 900  
Indianapolis, IN 46204  
Phone: (317) 692-9000

Counsel for *Amici Curiae*